

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

RDO Equipment Company  
3275 Highway 86  
Imperial, California 92251

ID No. CAD981655780

Respondent

Docket HWCA 2003-0106

STIPULATION AND ORDER

Health and Safety Code  
Section 25187

The State Department of Toxic Substances Control (Department) and RDO Equipment Company (Respondent) enter into this Stipulation and Order (Order) and agree as follows:

1. A dispute exists regarding the draft Enforcement Order issued by the Department on August 11, 2003. Respondent allegedly violated California Health and Safety Code section 25201(a), in that on or about December 6, 2002, and on May 2, 2003, Respondent had disposed of used oil, a California hazardous waste, to the ground. Respondent allegedly violated California Code of Regulations, title 22, section 66265.52(d), in that on or about December 6, 2002, Respondent failed to keep contingency plan up to date; failed to list the current telephone numbers of the facility's emergency contacts. Respondent allegedly violated California Code of Regulations, title 22, section 66265.16(d), in that on or about December 6, 2002, Respondent failed to maintain the following documents: job title,

job description, job training requirements, and documentation of training of those employees who handle hazardous waste.

2. The parties wish to avoid the expense of further litigation.

3. Jurisdiction exists pursuant to Health and Safety Code section 25187.

4. Respondent waives any right to a hearing in this matter.

5. This Order shall constitute full settlement of the violations alleged in the draft Enforcement Order, but does not limit the Department from taking appropriate enforcement action concerning other violations.

#### SCHEDULE FOR COMPLIANCE

6. All alleged violations have been corrected. On April 29, 2003, Respondent provided a copy of the California Uniform Hazardous Waste Manifest number 22693203 that was used to dispose of the contaminated soils generated from the used oil spills clean up. On April 29, 2003, Respondent provided copy of updated contingency plan and completed training records for all employees who handle hazardous waste.

7.1. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the

Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

7.2. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may:

a. Modify the document as deemed necessary and approve the document as modified; or

b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

7.3. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

7.4. Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Order. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further

actions as are necessary to protect public health or welfare or the environment.

7.5. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 9.3 in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Order.

7.6. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

7.7. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

7.8. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

#### PAYMENTS

8. Within 30 days of the effective date of this Order, Respondent shall pay the Department a total of \$14,000.00. Respondent's check shall be made payable to Department of Toxic

Substances Control, shall include the Docket Number and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street  
P. O. Box 806  
Sacramento, California 95812-0806

A photocopy of the check shall be sent:

Ramon B. Perez  
Senior Staff Counsel  
Office of legal Counsel and Investigation  
Department of Toxic Substances Control  
2878 Camino Del Rio South Suite 402  
San Diego, California 92108

Juan M. Jimenez, Chief  
Border Unit  
Statewide Compliance Division  
Department of Toxic Substances Control  
2878 Camino Del Rio South Suite 402  
San Diego, California 92108

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees. In addition, Respondent agrees to send RDO Equipment employees to the California Compliance School, modules I through IV.

Attendance must be completed, and Respondent must submit a Certificate of Satisfactory Completion issued by the California Compliance School to the Department within 185 days of the effective date of this Order. If Respondent fails to submit the Certificates as required, an stayed penalty of \$5,000.00 becomes due and payable within 30 days after the expiration of the 185 day period. The 185 day period may be extended by the DTSC Branch Chief or his/her designee, upon receiving written request

demonstrating good cause. In addition, failure to perform as specified on this agreement will result in an additional \$5,000.00 penalty.

#### OTHER PROVISIONS

9.1. Additional Enforcement Actions: By agreeing to this Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Order.

9.2. Penalties for Noncompliance: Failure to comply with the terms of this Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

9.3 Parties Bound: This Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

9.4. Effective Date: The effective date of this Order is the date it is signed by the Department.

9.5 Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: November 6, 2003

Original signed by  
Terry W. Tolbert  
General Manager  
RDO Equipment Company

Dated: November 6, 2003

Original signed by  
Nennet V. Alvarez, Chief  
Cypress Branch  
Statewide Compliance Division  
Department of  
Toxic Substances Control